

REMARKS

As suggested by the Examiner, the Specification has been amended to incorporate the term “hourglass shape.”

Accordingly, the Examiner’s concern regarding the Specification may be withdrawn.

Claims 22-25 stand withdrawn.

Claims 5-6, 9, 16, 17, and 19 stand rejected under 35 USC Section 112 as allegedly indefinite for lack of the term “substantially” prior to the term “hourglass shape.”

Applicant has throughout the claims placed the term “substantially” prior to the term “hourglass shape.”

Accordingly the rejection of claims 5-6, 9, 16, 17, and 19 as indefinite may be withdrawn.

Claims 19-20 stand rejected under 35 USC Section 102 as allegedly anticipated by Wadden (US 5,881,932).

Claims 19 and 20 call for “first and second lobes.” The term “lobe” is defined as:

a projection or protuberance of rounded or globular form

Applicant attaches hereto a copy of the definition of “lobe” as taken from applicant’s dictionary.

5 As may be appreciated, such rounded or globular features, i.e., lobes, provide improved comfort when applied as lumbar support as disclosed by applicant herein. Nowhere does Wadden suggest that the disclosed container be used as lumbar support. While the contour and overall exterior shape does accommodate body contact while carrying the Wadden container, such contour and overall exterior shape as shown by Wadden is inappropriate for use as lumbar support. More particularly, the non-rounded and sharp corner presented by the Wadden container would appear to  
10 provide nothing but discomfort if used as lumbar support.

The rounded shape, or lobes as claimed herein, relate to an important function of the claimed device, i.e. user comfort when used for lumbar support.

15 Because Wadden fails to show “first and second lobes” e.g., rounded or globular features, as claimed by applicant, Wadden fails as a 35 USC Section 102 reference.

Accordingly, the rejection of claims 19 and 20 as anticipated by Wadden must be withdrawn.

20 Claims 26 and 28-29 stand rejected under 35 USC Section 102 as allegedly anticipated by Dougherty (US 5,816,395) substituting for Official Notice.

25 The container shown by Dougherty fails to show “a molded resilient structure, said structure including a first portion and a second portion, said first portion having a front-to-back thickness less than a front-to-back thickness of said second portion” as required by claim 26. Dougherty only shows a container which when closed presents a uniform front-to-back thickness.

Accordingly, Dougherty fails as a 35 USC Section 102 reference anticipating claims 26 and its dependents 28-29.

Furthermore, the Examiner alleges as “padding” the elements marked with reference numerals 16, 18, 120 and 122. In fact, such structures 16, 18, 120 and 122 are not padding but rather what is called “intermediate foam layers.” These interior structures do not provide padding. Padding elements are provided, but as interior elements directly contacting the article held by the container. More particularly, Dougherty identifies elements 20, 22, 132 and 134 as “cushioning layers.” The outer shell is identified as elements 12, 14, 112 and 114.

Clearly, Dougherty fails to show, or even suggest, use of padding exterior of a resilient structure as required by claims 26 and 28-29.

Accordingly, the rejection of claims 26 and 28-29 as anticipated by Dougherty must be withdrawn for this separate basis.

Claims 27 stands rejected under 35 USC Section 102 as allegedly anticipated by Dougherty and in alternative as allegedly made obvious in light of Dougherty.

The Examiner argues that:

Although the bag or the case usually has a handle for transportation, it is not clearly shown by Dougherty. In the event Dougherty does not disclose the handle, it would have been obvious to provide a handle attachment for ease of use as notoriously known in the container art.

In fact, Dougherty does not show, nor even suggest, use of a handle.

Accordingly the rejection of claim 27 as anticipated by Dougherty must be withdrawn.

Furthermore, claim 27 carries the limitations of claim 26, requiring as noted above padding  
5 elements exterior of a resilient structure. For this separate basis, the rejection of claim 27 as  
anticipated by Dougherty fails.

As for obviousness, it is the Examiner's responsibility to present *prima facie* obviousness in  
support of a Section 103 rejection. Without some suggestion or motivation to do so as found in the  
10 cited Dougherty reference, the Examiner has failed to establish *prima facie* obviousness in light of  
the Dougherty reference. While the container art may "notoriously" include handle attachment for  
transportation, it is the Examiner's obligation to show such relative to the particular container  
shown in the base reference.

15 More importantly, however, Dougherty fails as a 35 USC Section 103 reference for its lack  
of showing, let alone even suggesting, a padding element exterior of a resilient structure. The only  
padding shown by Dougherty is the interior-most structure directly contacting the article held by the  
container.

20 Accordingly Dougherty also fails as a 35 USC Section 103 reference relative to claim 27.

Claims 1-21 stand rejected as allegedly obvious over Rota (US 6,332,566) in view of  
Wadden (US 5,881,932).

25 First, neither Rota nor Wadden show or suggest use of the respective container as lumbar  
support. Both accommodate body contact when carried by the user and the overall shapes of both  
containers reflect such anticipated body contact and comfort, but only when carried by the user.  
Accordingly, neither reference can fairly suggest to one of ordinary skill in the relevant art such

shape and contour as would be suitable for lumbar support, e.g., a substantially hourglass shape with first and second lobes.

As the Examiner notes, the Rota reference does not in fact show a substantially hourglass shape with first and second lobes. Wadden similarly fails to show a substantially hourglass shape with first and second lobes.

As noted herein, the term "lobe" implies a rounded or globular structure, and one particularly useful as lumbar support. Incorporating the shape and contour of the Wadden container into the Rota container fails to cure this fatal shortcoming of the Examiner's proposed 35 USC Section 103 combination: neither reference individually or in combination teach the claim limitations. In this case shape and contour is not an arbitrary choice, but rather one relating to an important use of the claimed device.

Because neither the Rota reference nor the Wadden reference show a substantially hourglass shape with rounded or globular features as claimed, the combination fails to show the claimed features and thereby fails a basis for obviousness under 35 USC Section 103.

In light of the above amendment and remarks, reconsideration and withdrawal of the outstanding rejections is respectfully requested.

Respectfully submitted,

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2/28/2005

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**lobular**

1. a very extensive genus of herbs with long clusters of blue, red, or white flowers. The best-known species are *Lobelia inflata* (Indian tobacco), which is cultivated in North America and employed in medicine as an emetic, expectorant, etc., and *Lobelia cardinalis* or the cardinal flower, known for its vivid red flowers.

[illegible]

1. a thick gruel. [Obs.]  
 2. a mudhole; muddy puddle. [Colloq.]  
 3. (a) any of various thick-barked pines of the southern United States; (b) the wood of any of these trees; also *loblolly* pine.  
 4. a loutish, uncouth, or foolish person. [Obs.]

4. a loutish, uncouth, or foolish person.  
 [Obs.]  
 lob'lo'ly báy, *Gordonia lasianthus*, an elegant  
 ornamental evergreen tree of the southern  
 United States.  
 lob'lo'ly boy, the attendant of a ship's doctor.  
 [Obs.]  
 lob'lo'ly pine, a large tree, *Pinus izeae*, found  
 growing in the southern United States.  
 lob'lo'ly tree, one of several trees of the West  
 Indies, especially *Cucania glabra*.  
 lob'lo'ly, also a verb, to be a lout.

60b0, n. [SP] a wolf from T. 1494; a well-known animal from the large gray timber wolf of the eastern United States.  
60b0a, n. [from Gr. *lobos*, a lobe; and *omyia* of *Rhipisopa*, of a shapeless character and having pseudopodia of a thick and irregular form, as in the amoeba.  
60b0b-my, n. [lobe and *omy*] a surgical operation in which a lobe of the brain; especially the frontal lobe of the cerebrum; is cut out, as in the treatment of certain psychoses.  
60b0c, n. [from Gr. *lobos*, a lobe; and *ectomy*, to remove or lobectomy.]

ob/courate, n. same as *lob/courate*.  
ob/course, n. [in basic sciences, esp. in physics] thick and dial. *course*, steep slope, a hillside of meat, vegetables, and sheep's biscuit.  
ob/sid'ed, n. same as *lapsed*.  
ob's'pound, n. same as *lapsed*. [Obs.]  
ob's'ter, n. [ME *loquere*, *loquere*; AS *loþ-gestr*, *loþstre*, a lobster; prob. altered from *locastra*, a marine shellfish.]  
1. any of a genus, *Homarus*, of edible sea crustaceans, with compound eyes, long antennae, and five pairs of legs, the pair of

tennae, and five pairs of legs, the first pair of which are modified into large, powerful pincers; lobsters are greenish or dark gray in color. When alive, but turn bright red when cooked. The common lobster, *Homarus vulgaris*, is found in Europe, and many other species are found in many parts of the world. The American lobster, *Homarus americanus*, is common to the Atlantic coast of North America.

1. the flesh of this animal used as food
2. the sea crawfish, or spiny lobster, *Palaeomonetes pargensis*
3. the sea crayfish, or spiny lobster, *Palaeomonetes pargensis*

*Palaeomonetes* is probably so called originally because of its pincer-like claws.

country became more  
nally because of his suffer-  
of his red coat. [Brit. Slang.]

5. an awkward, troublesome, or glib  
person. [Slang.]

6. a larva of the European  
pean bombayid, or lobster moth.  
b'ester louse, a parasite found on the gill  
of the European lobster.

lob'ŭ-lar, *a.* pertaining to or resembling a lobe or lobules.  
lob'ŭ-late, lob'ŭ-lat-ed, *a.* consisting of or divided into lobules.  
lob'ŭ-le, *n.* [compare *Fr. lobule*, dim. of *lobe*, a lobe.] a small lobe.

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inf-letter\*, n. [dim. of *lobe*,] a minute lobe or part of a lobe.

lob-worm, n. same as *Higworm*.

lob\*, n. [Fr. *locat*; LL. *localis*, pertaining or belonging to a place, from L. *locus*, place.]  
1. relating to place.  
2. of characteristic of, or confined to a particular place; as, *localities*.  
3. restricted; narrow; confined; as, *local outlook*.  
4. of for a particular part or specific area of the body.  
5. making all stops along its run; as, a *local train*.  
6. mathematics related to or concerning

[illegible]

tion where the cause arises.  
(1) *local attraction*; (2) in magnetism, any attraction near the compass causing the needle to deviate; (3) in astronomy, deviations from the direction of gravity, caused by attraction due to irregularities in the density or form of the earth's crust.  
(4) *local battery*, a battery that supplies the power for recording instruments in a telegraph office as distinguished from the battery supplying a current for the line.  
(5) *local circuit*; telegraphy, the circuit of a

local circuit; in telegraphy, the circuit of a local battery. customers and other features characteristic of a certain region or time, introduced into a novel, play, etc. to supply realism. **local government;** (a) government of the affairs of a town, district, etc. by the people living there; (b) the people chosen to administer this government. **local option;** the right of determining by vote whether the sale of intoxicating liquors shall be permitted, restricted or forbidden.

shall be permitted, restricted, or forbidden in their locality.

**local preacher**, a layman in the Methodist church licensed to preach within a certain district.

**local time**, the time of a place according to its particular meridian.

**local voice**, an arithmetic, the value attached to a particular letter.

**local train**, bus, etc.

**local paper**, item relating to a particular community and having interest only to the residents of it.

2. residents of it.

3. a chapter or branch of a larger organization, especially of a labor union.

4. in telegraphy, a local-circuit battery or the circuit itself.

10. *local*, *n.* [*Fr. local*, a locality.]

11. a place, spot, or site; specifically, a location considered with reference to the events or circumstances limited to a certain locality.

12. *locality*, *n.* the state or condition of being local; the influence that a particular place or locality exerts.

or locality exerts.

2. affection for a particular place.
3. the narrowness or limitation of thought or feeling growing out of such affection: provincialism.
4. a way of speaking or acting that is peculiar to a certain locality; a custom.
5. a word, meaning, or expression pronounced or written in one locality.



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